



435 MSS DPCN/EMR

Works Councils (WC)

German Labor Law and Basics of Participation

Works Councils

Structure of the Presentation

- General
- Legal provisions
- Participation rights in detail
 - Cooperation
 - Co-determination
- Summary

General

Definition (1/2)

- Definition:

The works council is a committee that is elected from the non-us workforce of an agency, to represent the interests of that workforce.

General

Definition (2/2)

- **Committee**

Making decisions as a group

- **Agency**

Determination by USAFE HQ

- **Representing interest of employees**

Legal basis and those rights are enforceable through labor court

- **Term of office**

4 years

Legal Provisions

Most important Rights of the WC (1/3)

- Immediate contact to agency chief
- Personnel assemblies twice per year
- Monthly meetings
- Special termination protection
 - Regular WC-members
 - Substitute WC-members

Legal Provisions

Most important Rights of the WC (2/3)

- Release from duty with pay
 - There is a release from duty full-time, if the number of employees exceeds 300
 - In order to get specific training
 - In order to do the necessary WC business

Legal Provisions

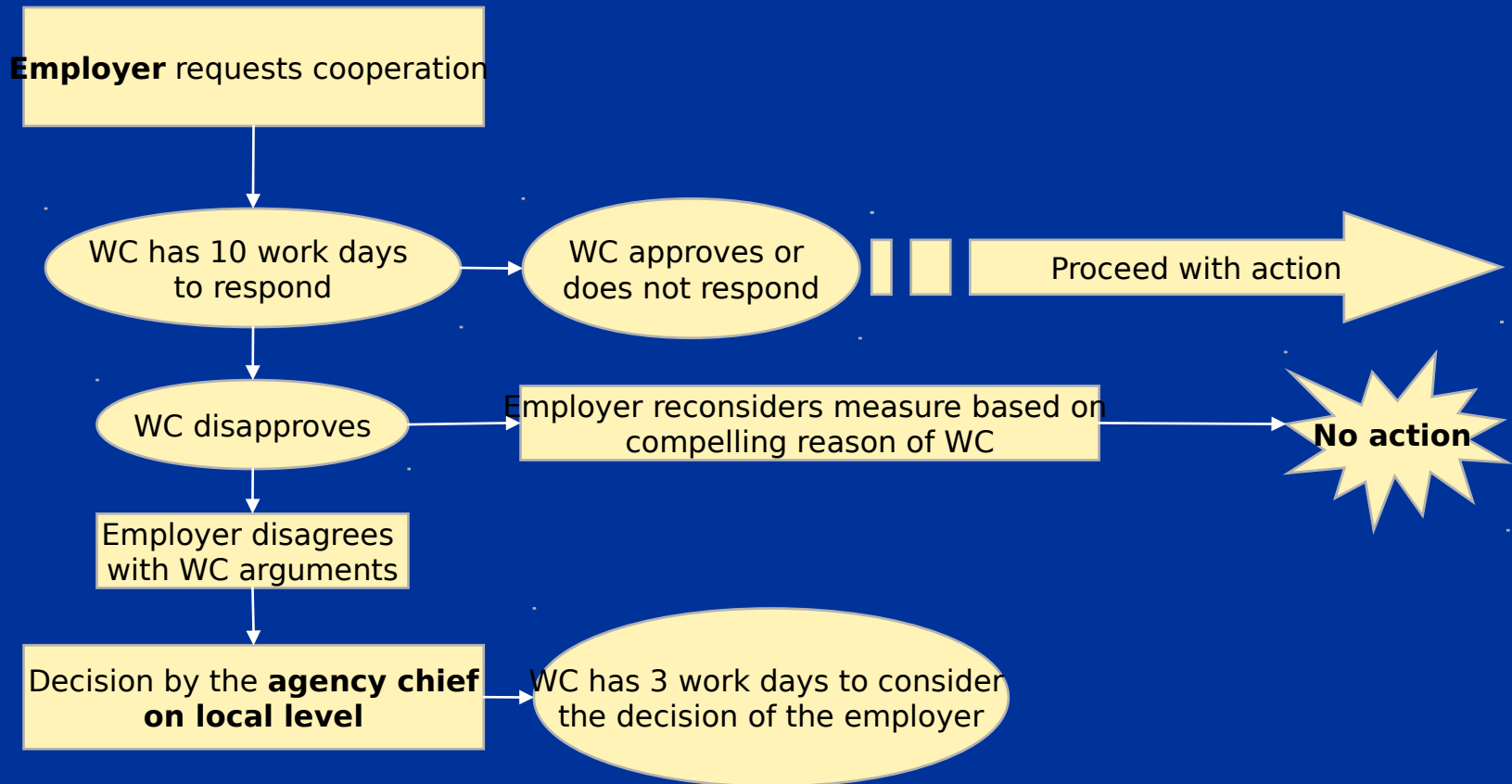
Most important Rights of the WC (3/3)

● Participation rights

- Right to be informed timely and comprehensively
- Right to be heard, enables the WC to show initiative
- Cooperation
 - Formal procedure
 - Catalog of topics
- Co-determination
 - Formal procedure
 - Catalog of topics

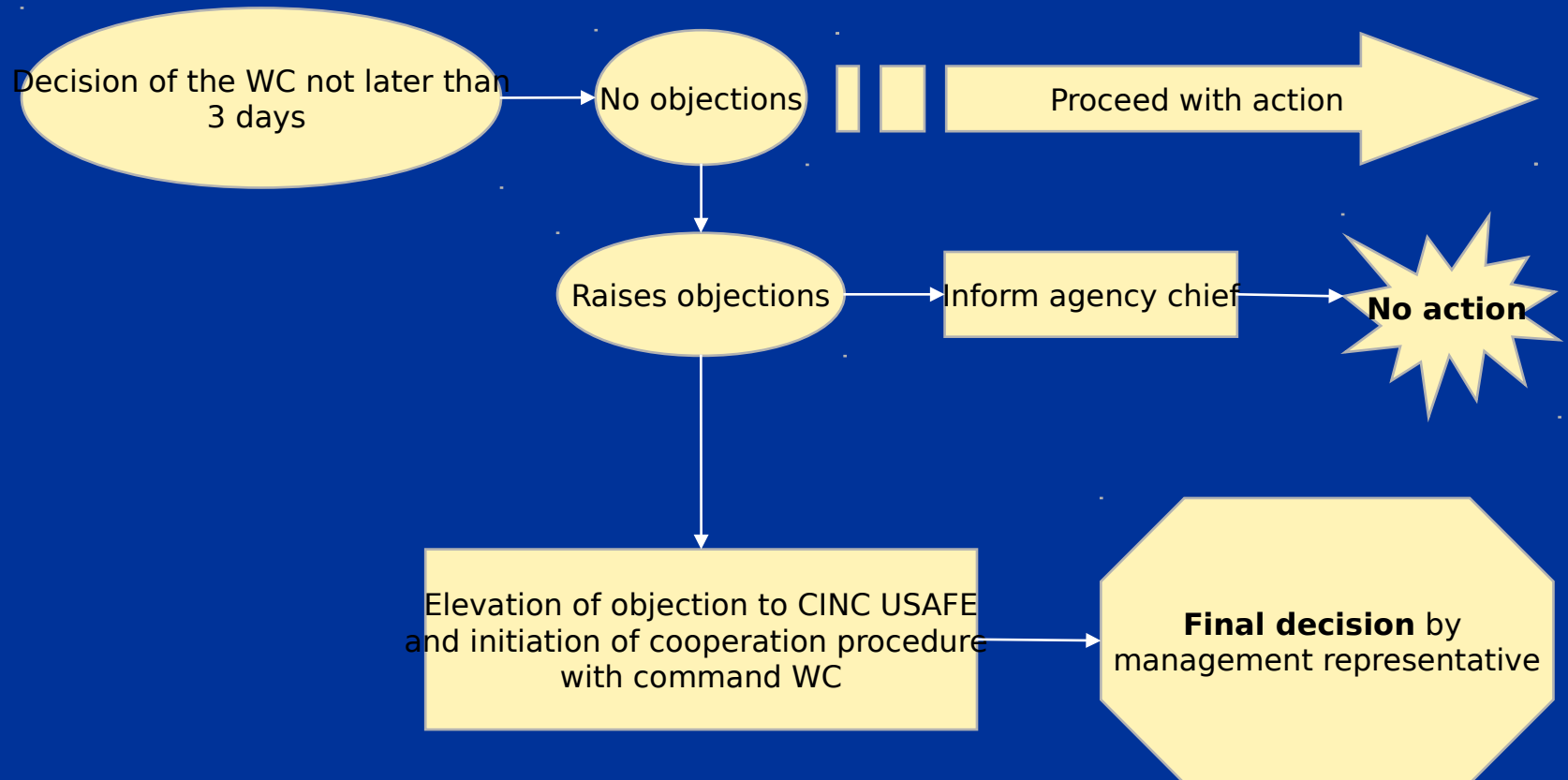
Cooperation Rights

Cooperation Procedure (1/2)



Cooperation Rights

Cooperation Procedure (2/2)



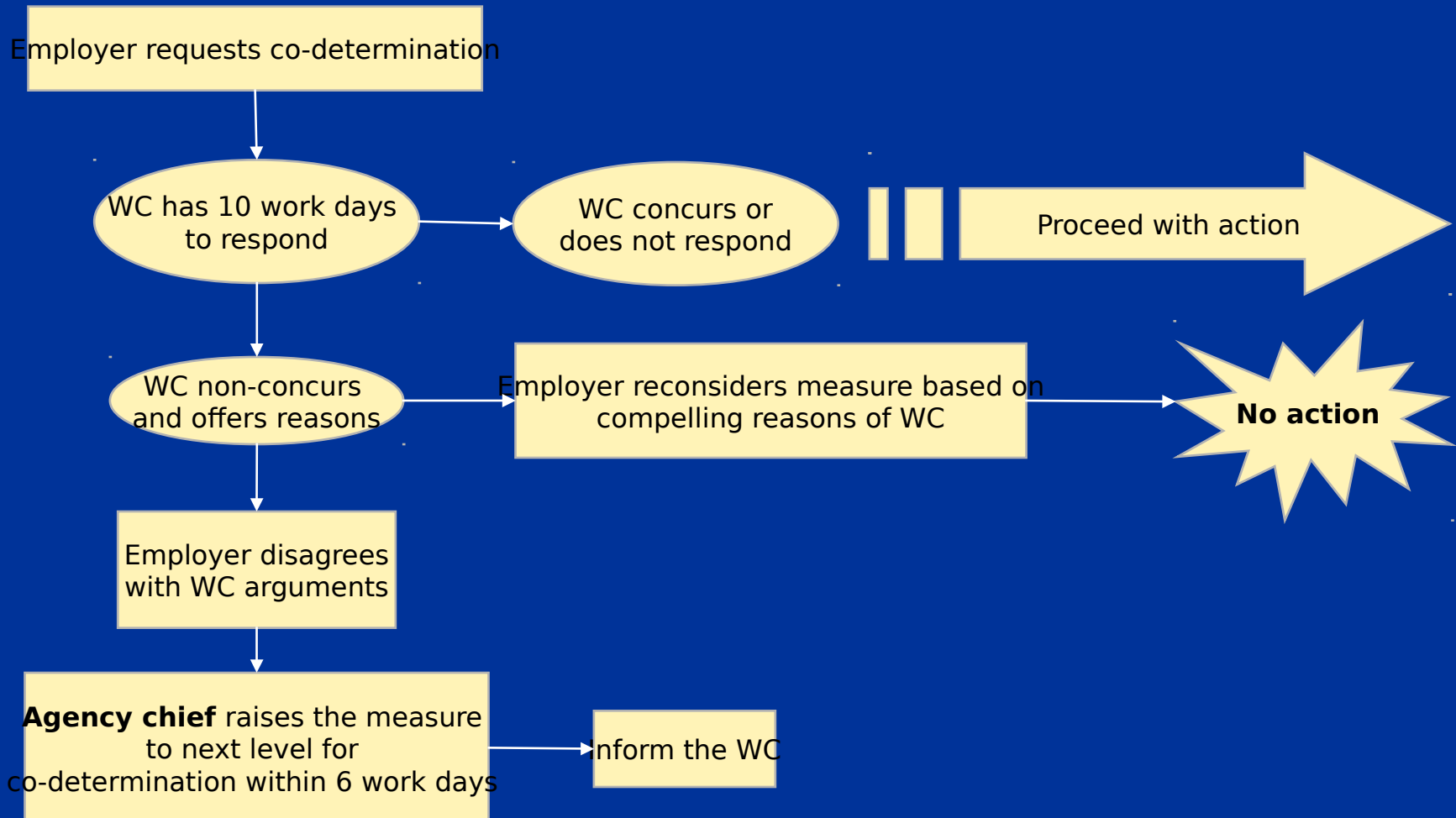
Cooperation Rights in Detail

Cooperation Topics

1. Appointment of employees
2. Allocation of duties rating higher or lower than the previous ones, up-grading or downgrading, initial grading
3. Development of social plans
4. Measures to increase work output and to facilitate the progress of work
5. Implementation of basically new working methods
6. Administrative directives for internal, social and personal matters
7. Disintegration, limitation, transferal and assembly of agencies
8. Ordinary notice termination
9. Ordinary notice of change in employment condition

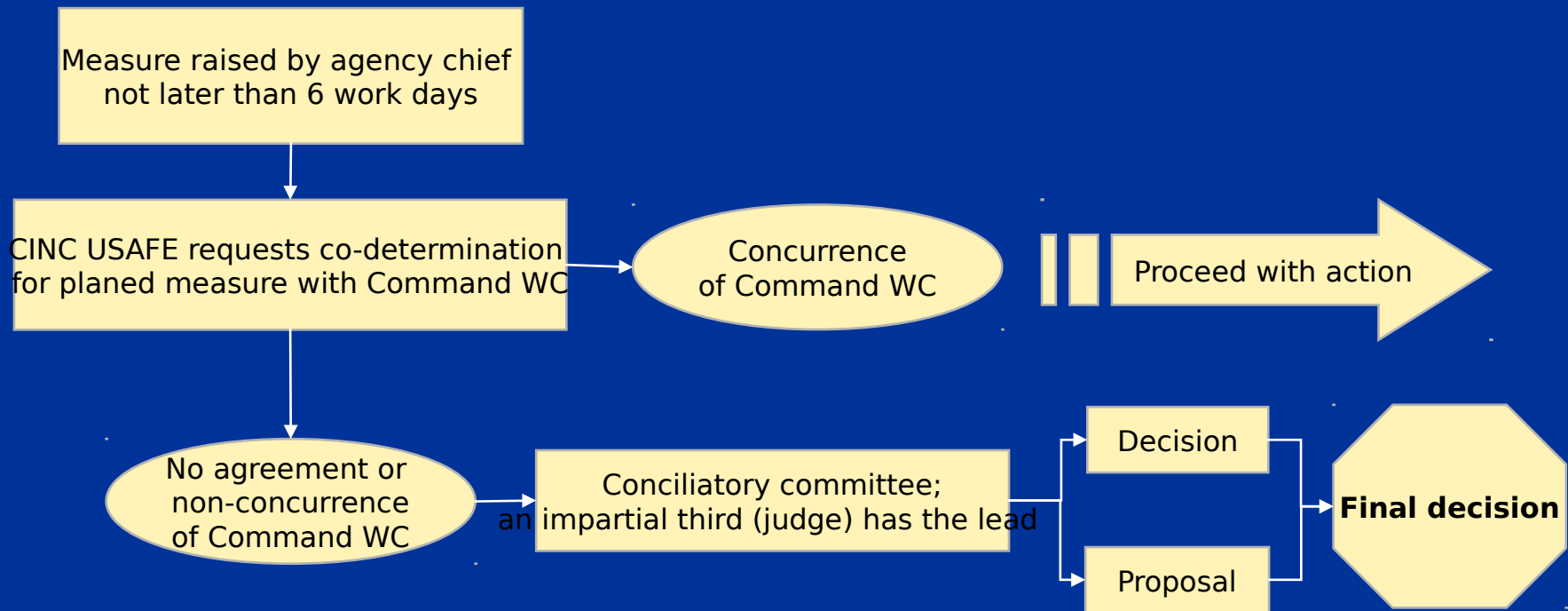
Co-determination Rights

Co-determination Procedure (1/2)



Co-determination Rights

Co-determination Procedure (2/2)



Co-determination Rights in Detail

Co-determination Topics (1/4)

1. Transfer to another agency
2. Detail for a period of more than 3 months
3. Continued employment beyond the age of retirement
4. Instructions restricting freedom of choice of the home
5. Refusal to grant or revocation of the permission for a secondary occupation
6. Granting of support allowances, advance payments and loans
7. Assignment and termination of quarters
8. Allocation of land belonging to the agency or of any leased land and laying down the conditions for its use
9. Beginning and end of the daily tour of duty and the breaks

Co-determination Rights in Detail

Co-determination Topics (2/4)

- | | |
|---|---|
| <p>10. Determination of the time and place and method of payment</p> | <p>13. Management of welfare facilities maintained exclusively for civilian labor</p> |
| <p>11. <u>Annual leave plan</u>; settling differences with the timing of annual leave, if there is no agreement</p> | <p>14. Implementation of vocational training</p> |
| <p>12. Wage policies, development of new payment methods, piece rate and premium tables</p> | <p>15. <u>Choice of participants in events furthering the education</u></p> |
| | <p>16. <u>Contents of personnel questionnaires</u></p> |

Co-determination Rights in Detail

Co-determination Topics (3/4)

17. Guidelines for the assessment of the work performance of employees

18. Appointment of public health commissioners or agency medical advisors as civil servants

19. Measures for the prevention of accidents at the place of work and of other damage to health

20. Principles for the valuation of recognized proposals within the framework of the proposal system of the agency

21. If announcement of positions to be filled is waived

22. Principles of order and conduct of employees

23. Layout of the work place

Co-determination Rights in Detail

Co-determination Topics (4/4)

24. Introduction and application of technical facilities designed to control the conduct or performance of the employee

25. General questions concerning the further education of the employees

26. Guidelines of personnel selection to appointments, transfers, re-grouping and notice of termination of employment

27. Making claims for damages against an employee

Major Differences in the Participation Rights

● **Cooperation**

Only employer can initiate measures falling under cooperation

The WC can appeal the employers decision

Final decision by HQ USAFE

No appeal possible

● **Co-determination**

Both parties can initiate measures falling under co-determination

The employer can appeal the wc's non-concurrence

Depending on the action taken or initiator the conciliatory committee decides

Last resort: the decision of the conciliatory committee can be referred by both parties to court for review

Consequences of the Unrestricted Application of the Fed.Pers.Rep.Law of 1991

- Proposed measures must be understandable and have a justified rationale
- The co-determination makes practicable solutions between employer and WC necessary in order to evade formal procedures
- The employer must be willing to take back actions, that have not been concurred upon by the WC, if the WC denied concurrence offering justified reasons
- On local level agreements should be made possible, because:
 - Little influence regarding the decision later on
 - Time and money consuming
 - Evade a final decision by the conciliatory committee
 - Try to use shop agreements to the extend possible

Summary

- The underlying rationale is, to protect the employees as a group from one-sided and possibly adverse decisions of the employer
- Even though the WC is a collective body, it has participation rights in individual cases
- The topics of participation require interpretation and a case-by-case approach
- Negotiations instead of decisions are required



**Whenever you plan to take an action
that requires WC Participation**

CALL:

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